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the United States, as a bank holding company) that is—

(1) Incorporated or organized in a country other than the United States; and

(2) Predominantly engaged in (including through a branch in the United States) financial activities as defined in § 242.3 of this part.

Nonbank financial company.—The term “nonbank financial company” means a U.S. nonbank financial company and a foreign nonbank financial company.

Nonbank financial company supervised by the Board.—The term “nonbank financial company supervised by the Board” means a nonbank financial company or other company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) should be supervised by the Board and for which such determination is still in effect.

State.—The term “State” includes any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

U.S. nonbank financial company.—The term “U.S. nonbank financial company” means a company that—

(1) Is incorporated or organized under the laws of the United States or any State;

(2) Is predominantly engaged in financial activities as defined in § 242.3 of this part; and

(3) Is not—

(i) A bank holding company;

(ii) A Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*);

(iii) A national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository that, in each case, is registered with the Securities and Exchange Commission as such; or

(iv) A board of trade designated as a contract market (or parent thereof), a derivatives clearing organization (or

parent thereof, unless the parent is a bank holding company), a swap execution facility, or a swap data repository that, in each case, is registered with the Commodity Futures Trading Commission as such.

§ 242.3 Nonbank companies “predominantly engaged” in financial activities.

(a) *In general.* A company is “predominantly engaged in financial activities” for purposes of this section if—

(1) The consolidated annual gross financial revenues of the company in either of its two most recently completed fiscal years represent 85 percent or more of the company’s consolidated annual gross revenues (as determined in accordance with applicable accounting standards) in that fiscal year;

(2) The consolidated total financial assets of the company as of the end of either of its two most recently completed fiscal years represent 85 percent or more of the company’s consolidated total assets (as determined in accordance with applicable accounting standards) as of the end of that fiscal year; or

(3) The Council, with respect to the definition of a nonbank financial company for purposes of Title I of the Dodd-Frank Act (other than with respect to the definition of a significant nonbank financial company), or the Board, with respect to the definition of a significant nonbank financial company, determines, based on all the facts and circumstances, that—

(i) The consolidated annual gross financial revenues of the company represent 85 percent or more of the company’s consolidated annual gross revenues; or

(ii) The consolidated total financial assets of the company represent 85 percent or more of the company’s consolidated total assets.

(b) *Consolidated annual gross financial revenues.* For purposes of this section, the “consolidated annual gross financial revenues” of a company means that portion of the consolidated annual gross revenues of the company (as determined in accordance with applicable accounting standards) that are derived, directly or indirectly, by the company or any of its subsidiaries from—

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(1) Activities that are financial in nature; or

(2) The ownership, control, or activities of an insured depository institution or any subsidiary of an insured depository institution.

(c) *Consolidated total financial assets.* For purposes of this section, the “consolidated total financial assets” of a company means that portion of the consolidated total assets of the company (as determined in accordance with applicable accounting standards) that are related to—

(1) Activities that are financial in nature; or

(2) The ownership, control, or activities of an insured depository institution or any subsidiary of an insured depository institution.

(d) *Activities that are financial in nature—*(1) *In general.* For purposes of determining whether a company is predominantly engaged in financial activities under this section, activities that are financial in nature are set forth in the appendix to this part. Nothing in this part limits the authority of the Board under any other provision of law or regulation to modify the activities determined to be financial in nature for purposes of this section or for purposes of the BHC Act or to provide interpretations of section 4(k) of the BHC Act.

(2) *Effect of other authority.* Any activity described in the appendix is financial in nature for purposes of this part regardless of whether—

(i) A bank holding company (including a financial holding company or a company that is, or is treated in the United States as, a bank holding company) may be authorized to engage in the activity, or own or control shares of a company engaged in such activity, under any other provisions of the BHC Act or other Federal law including, but not limited to, section 4(a)(2), section 4(c)(5), section 4(c)(6), section 4(c)(7), section 4(c)(9), or section 4(c)(13) of the BHC Act (12 U.S.C. 1843(a)(2), (c)(5), (c)(6), (c)(7), (c)(9), or (c)(13)) and the Board’s implementing regulations; or

(ii) Other provisions of Federal or state law or regulations prohibit, restrict, or otherwise place conditions on the conduct of the activity by a bank holding company (including a financial

holding company or a company that is, or is treated in the United States, as a bank holding company) or bank holding companies generally.

(e) *Rules of construction.* For purposes of determining whether a company is predominantly engaged in financial activities under this section—

(1) *Unconsolidated investments.* (i) Unless otherwise determined by the Council or the Board in accordance with paragraph (e)(1)(ii) of this section, revenues derived from, and assets related to, an investment by the company in an entity whose financial statements are not consolidated with those of the company are presumed to be financial in nature.

(ii) A company may seek to rebut the presumption described in paragraph (e)(1)(i) of this section by providing evidence to the Council, with respect to the definition of a nonbank financial company for purposes of Title I of the Dodd-Frank Act (other than with respect to the definition of a significant nonbank financial company), or the Board, with respect to the definition of a significant nonbank financial company, that the shares or ownership interests are not held in connection with a bona fide merchant or investment banking activity, are not held in connection with the activity of investing for others, do not represent an investment in an entity engaged in activities that are financial in nature as defined in the appendix, or are not otherwise related to a financial activity.

(2) *Accounts receivable.* (i) Unless otherwise determined by the Council or the Board in accordance with paragraph (e)(2)(ii) of this section, an account receivable is presumed to be an asset related to the financial activity of extending credit.

(ii) A company may seek to rebut the presumption described in paragraph (e)(2)(i) of this section by providing evidence to the Council, with respect to the definition of a nonbank financial company for purposes of Title I of the Dodd-Frank Act (other than with respect to the definition of a significant nonbank financial company), or the Board, with respect to the definition of a significant nonbank financial company, that the account receivable is not related to a financial activity.

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(3) *Goodwill*. Goodwill is excluded from a company's consolidated total assets and consolidated total financial assets.

(4) *Cash and cash equivalents*. (i) Cash is excluded from a company's consolidated total assets and consolidated total financial assets.

(ii) Cash equivalents are assets related to a financial activity.

(5) *Intangible assets*. Intangible assets are treated in the same manner as the transaction or asset that gives rise to the intangible asset.

§ 242.4 Significant nonbank financial companies and significant bank holding companies.

For purposes of Title I of the Dodd-Frank Act, the following definitions shall apply:

(a) *Significant nonbank financial company*. A “significant nonbank financial company” means—

(1) Any nonbank financial company supervised by the Board; and

(2) Any other nonbank financial company that had \$50 billion or more in total consolidated assets (as determined in accordance with applicable accounting standards) as of the end of its most recently completed fiscal year.

(b) *Significant bank holding company*. A “significant bank holding company” means any bank holding company or company that is, or is treated in the United States as, a bank holding company, that had \$50 billion or more in total consolidated assets as of the end of the most recently completed calendar year, as reported on either the Federal Reserve's FR Y-9C (Consolidated Financial Statement for Bank Holding Companies), or any successor form thereto, or the Federal Reserve's Form FR Y-7Q (Capital and Asset Report for Foreign Banking Organizations), or any successor form thereto.

APPENDIX A TO PART 242—FINANCIAL ACTIVITIES FOR PURPOSES OF TITLE I OF THE DODD-FRANK ACT

(a) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

(b) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or

broker for purposes of the foregoing, in any state.

(c) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

(d) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

(e) Underwriting, dealing in, or making a market in securities.

(f) Engaging in any activity that the Board has determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, which include—

(1) *Extending credit and servicing loans*. Making, acquiring, brokering, or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts) for the company's account or for the account of others.

(2) *Activities related to extending credit*. Any activity usual in connection with making, acquiring, brokering or servicing loans or other extensions of credit, including the following activities:

(i) *Real estate and personal property appraising*. Performing appraisals of real estate and tangible and intangible personal property, including securities.

(ii) *Arranging commercial real estate equity financing*. Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control, and risk of such a real estate project to one or more investors.

(iii) *Check-guaranty services*. Authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services, and purchasing from the merchant validly authorized checks that are subsequently dishonored.

(iv) *Collection agency services*. Collecting overdue accounts receivable, either retail or commercial.

(v) *Credit bureau services*. Maintaining information related to the credit history of consumers and providing the information to a credit grantor who is considering a borrower's application for credit or who has extended credit to the borrower.

(vi) *Asset management, servicing, and collection activities*. Engaging under contract with a third party in asset management, servicing, and collection¹ of assets of a type that

¹Asset management services include acting as agent in the liquidation or sale of loans and collateral for loans, including real estate and other assets acquired through foreclosure or in satisfaction of debts previously contracted.